



## Notice of Determination

### Tennessee General Aquatic Resource Alteration Permits

This notice presents the Tennessee Department of Environment and Conservation, Division of Water Pollution Control's (the division) responses to comments on the draft General Aquatic Resource Alteration Permits, as well as setting forth the final determination.

#### I. Background

The general permits establish a mechanism to authorize specific qualifying alterations to waters of the state for a period of five years. Each general permit establishes the level of coordination with the division required for approval of a particular qualifying activity. Since the alterations authorized by general permits are considered minor, the division does not publish Public Notices for each authorization under general permits. It is the belief of the division that these qualifying activities would not normally result in degradation of waters of the state per the Rules of the Tennessee Water Quality Control Board, Chapter 1200-4-3-.06 *Tennessee Antidegradation Statement*.

The general permits were advertised for public comment on April 29, 2005. Public hearings were held on June 2, 6 and 7, 2005 in Knoxville, Nashville and Memphis respectively. The general permits were subsequently issued and became effective on July 1, 2005. Permits pursuant to *The Tennessee Water Quality Control Act of 1977* are limited to a maximum duration of five years. This group of general permits will expire June 30, 2010. The general permits may be revoked, refined or amended through public notice and participation during their term.

Of these 15 general permits, 12 have been in use for a period of five years and were re-issued, with some changes. Two new general permits have been developed. Two of the previous general permits were combined into one. The division may develop new general permits as needed.

#### II. Comments and Responses

The public's concerns and questions, along with the division's responses are supplied in this section. These comments were gathered through the course of public hearings, both verbal and written, along with submittal of written comments through mail, e-mail and fax.

##### **General Permit for the Alteration of Wet Weather Conveyances:**

Comment: *There is confusion among the public about what a wet weather conveyance actually is and it is thought that the General Permit for Alteration of Wet Weather Conveyances could be used for surface mining activities. The General Permit for Alteration of Wet Weather Conveyances should specify that it is not intended to authorize surface mining activities and that it is intended for use only in situations of man-made conveyances.*

Response: Wet weather conveyances are defined in the Rules of Tennessee Department of Environment and Conservation (1200-4-3-.04) as "man-made or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality and whose channels are above the groundwater table and which do not support fish or aquatic life and are not suitable for drinking water supplies." Wet weather conveyances are not streams. If the

requirements of the permit to protect down gradient streams are met, then the division does not believe that there is a basis for excluding any particular category of activity. The division is not proposing to change the scope of our regulatory program with the re-issuance of this general permit, which has been in place for many years. By rule, the wet weather conveyances are not limited to only man-made conveyances.

Comment: *If it is up to the applicant to determine if something is a wet weather conveyance or a stream, then small streams could be destroyed without even a notification to the division. The division should require notification and documentation before a project impacting wet weather conveyances is initiated.*

Response: The division frequently, when requested, conducts jurisdictional determinations to identify streams. The division believes that it is not necessary or practical to have notification for the alteration of wet weather conveyances. Since wet weather conveyances include any area with flow during a rain event, including curbs and gutters or any swale in an upland area, we cannot realistically be involved in alterations to them on a case-by-case basis. It is the burden of the applicant to choose to move forward under the coverage of the general permit or to request the guidance of the division for stream determination. An erroneous decision of the applicant, which results in the unauthorized alteration of a stream can result in enforcement action.

Comment: *The exclusions section of the General Permit for Bank Stabilization, the General Permit for Sediment Removal for Stream Remediation and the General Permit for the Alteration of Wet Weather Conveyances, should include "where a portion of the proposed activity is located in a component of the National Wild and Scenic River System, a State Scenic River, waters designated as Outstanding National Resource Waters;"*

Response: In drafting the general permits, the division carefully considered which waters should be excluded from coverage for each general permit. Since the general permits listed in the comment are considered to be either activities beneficial to the stream or not within the stream (wet weather conveyances), we do not believe it is necessary to exclude those specially designated waters from potential coverage by these general permits. In most cases of proposed stream alteration the division has the authority to require individual permits when we believe it is warranted.

#### **General Permit for Bank Stabilization:**

Comment: *The General Permit for Bank Stabilization should prioritize or require bioengineering techniques over the use of rip rap and/or gabion baskets etc.*

Response: The division does encourage the use of bioengineering techniques and will address those issues with the applicant upon receipt of their notice of intent. The general permit does encourage the use of bioengineering by removing the restriction on the length of stream bank that may be treated with this technique and by not requiring notification to the division in some circumstances.

Comment: *The General Permit for Bank Stabilization's limit of 300 feet of rip rap should be reduced to a lesser amount of rip rap allowed.*

Response: The division believes that the amount of rip rap allowed by the General Permit is appropriate and in most circumstances allows bank erosion problems to be addressed without degrading the stream.

Comment: *The General Permit for Bank Stabilization and the General Permit for Restoration and Habitat Enhancement seem to overlap. Would a stream restoration project that included bank stabilization require both permits?*

Response: Although some aspects of these two permits may appear to overlap, the division considers each application individually and will decide on the appropriate coverage, if any. If a project that is truly stream restoration includes elements of bank stabilization, we would use the General Permit for Restoration and Habitat Enhancement.

Comment: *The exclusions section of the General Permit for Bank Stabilization, the General Permit for Sediment Removal for Stream Remediation and the General Permit for the Alteration of Wet Weather Conveyances, should include "where a portion of the proposed activity is located in a component of the National Wild and Scenic River System, a State Scenic River, waters designated as Outstanding National Resource Waters;"*

Response: See response to this comment under the wet weather conveyances section.

Comment: *In the General Permit for Bank Stabilization, "...or other techniques as appropriate" should be added to the second sentence of the introductory paragraph.*

Response: The division believes the language in this section of the permit is sufficient to allow for consideration of "other techniques as appropriate."

#### **General Permit for Construction and Removal of Minor Road Crossings:**

Comment: *The General Permit for Construction or Removal of Road Crossings would be better if restricted to road crossings that cause minimal effects rather than being based on the length of stream involved.*

Response: When the division receives notification of intent to construct a road crossing, we review the proposal to assure that the impact on the stream has been minimized to the extent practicable. Further, Term and Condition number 9 requires that the width of fill (impact to the stream) be limited to the minimum necessary for the actual crossing.

Comment: *The General Permit for Construction or Removal of Road Crossings should also take into consideration the number of crossings in a sequence along a stream.*

Response: When reviewing notifications of intent the division does consider the number of crossings proposed in the same stream.

Comment: *For the General Permit for Construction or Removal of Road Crossings and the General Permit for Utility Line Crossings, flow should not have to be diverted if it involves only the placement of a culvert and clean rock and equipment will remain outside of the flowing water.*

Response: The division agrees, in part, and the language has been amended in the General Permit for Road Crossings.

Comment: *In the General Permit for Road Crossings, each culvert on a separate stream should be considered separately, even if in the same project. Cumulative impacts should only refer to culverts on the same stream and transitions should not be included in the 200 foot limit. Propose exclusion language "where the total length of stream encapsulation and transition is more than 200 feet on a single stream.*

Response: The division agrees, in part, and the language concerning impacts on separate streams for the same project has been amended. To assure that activities authorized under this general permit do not result in degradation of the affected stream, we believe any proposed crossing resulting in more than 200 feet of stream impact should be considered.

Comment: *In the General Permit for Road Crossings, cul-de-sacs and turnarounds should not be excluded and can be sited in a manner to minimize stream impacts.*

Response: The division disagrees. We believe the scope of this general permit should be limited to actual crossings of streams.

Comment: *In the General Permit for Road Crossings, item number six under the Terms and Conditions, should be re-worded to say that the bottom of culverts should be constructed ..... "in a manner which allows natural substrate to reestablish," instead of requiring that substrate be placed in the culvert.*

Response: The division agrees and the language has been amended.

**General Permit for Construction of Launching Ramps and Public Access Structures:**

No Comments received

**General Permit for Construction of Intake and Outfall Structures:**

- Comment: *The General Permit for the Construction of Intake and Outfall Structures should not allow stormwater outfall structures that discharge directly into the stream.*
- Response: The division disagrees. While we would normally discourage this practice in developed areas, there are circumstances where direct discharge is not detrimental to the stream. In many areas of the state management of stormwater is handled by local governments and receives some form of treatment prior to discharge to a stream.
- Comment: *In the General Permit for Construction of Intake and Outfall Structures, turbidity curtains should be included as part of appropriate BMPs in item number four of the Terms and Conditions..*
- Response: The division disagrees, but believe that there is sufficient flexibility within the permit to authorize the use of turbidity curtains where appropriate.
- Comment: *Suggested re-wording for item number five under Terms and Conditions in the General Permit for Construction of Intake and Outfall Structures:*  
Current language: New intake or outfall structures shall be located and oriented such as to avoid permanent alteration or damage to the integrity of the stream channel including the opposite stream bank. The alignment of the outfall structure should be as parallel to the stream flow as is practicable, with the discharge pointed downstream.  
Suggested language: *The alignment of the outfall structure (except for diffusers) should be as parallel to the stream flow as is practicable with the discharge pointed downstream. Diffusers may be placed perpendicular to stream flow for more complex mixing.*
- Response: The division agrees and the language has been amended.
- Comment: *In the General Permit for Construction of Intake and Outfall Structures, the phrase "to the extent practicable" should be added to item number 10 in the Terms and Conditions section." All contours must be returned to pre-project conditions...."*
- Response: The division agrees and the language has been amended.

**General Permit for Emergency Road Repair:**

- Comment: *In the General Permit for Emergency Road Repair, item number 13 under the Terms and Conditions, should require diversionary structures to be removed following project completion.*
- Response: The division agrees and the language has been amended.
- Comment: *In the General Permit for Emergency Road Repair, a designee of the chief administrative officer should be able to notify the division of work that needs to be done.*
- Response: The division agrees but has not amended the general permit since the provision for a designated representative to represent an applicant already exists for all permits.
- Comment: *In the General Permit for Emergency Road Repair, the work should not be limited to 400 feet of stream impact, assuming imminent threat to public safety.*
- Response: The division disagrees. The 400-foot limitation is in the *Tennessee Water Quality Control Act*. Other authorization mechanisms are available in instances of imminent threat to public safety.
- Comment: *In the General Permit for Emergency Road Repair, item number six under the Terms and Conditions, should be revised to say that sediment shall be prevented from entering*

*waters of the state where it is practicable considering the type of emergency and that erosion prevention and sediment controls will be installed when possible.*

Response: Although the division has not changed the language in the general permit, practicability and reasonableness will be considered in our evaluation of any project.

**General Permit for Maintenance Activities:**

Comment: *In the General Permit for Maintenance Activities, no notification should be needed for bridge scour repair if division specifies limits on distance from the bridge piers and type of materials used.*

Response: The division disagrees. Due to the potential scope of impact on stream habitat we believe this activity should normally be subjected to a case-by-case review. In true emergency circumstances, other authorization mechanisms exist.

Comment: *In the General Permit for Maintenance Activities, the division should remove the condition that the excavation and fill activities must be done separate from flowing waters or add the phrase "to the extent practicable and necessary."*

Response: The division agrees and the language has been amended.

Comment: *In the General Permit for Maintenance Activities, there needs to be a provision that allows for work to commence with notification, but without written authorization from the state or no notification at all.*

Response: The division disagrees. The potential scope of activities that could be assumed to be included in this general permit is too broad to forgo case-by-case review and authorization.

**General Permit for Minor Alterations to Wetlands:**

Comment: *In the General Permit for Minor Alterations to Wetlands, the definition of isolated wetlands should be changed to state that they are not connected to "surface waters" instead of "waters of the state" because waters of the state include groundwater.*

Response: The division disagrees. It is our intent to consider groundwater connections when considering authorizations under this general permit.

Comment: *In the General Permit for Minor Alterations to Wetlands, change the exclusion "when all avoidable and practicable measures have not been employed to avoid and minimize adverse impacts to the wetlands....." to "when all practicable measures to avoid and minimize adverse impacts to the wetlands and other waters of the state have been employed."*

Response: The division agrees and the language has been amended.

Comment: *The General Permit for Minor Alterations to Wetlands and the General Permit for Wetlands Restoration should include that clearing, grubbing, and other disturbance to the riparian vegetation should also be kept to the minimum necessary for project completion.*

Response: The division agrees and the language has been amended.

Comment: *In the General Permit for Minor Alterations to Wetlands, the exclusion for high resource value wetlands should be removed until the values can be quantified and are not entirely subjective.*

Response: The division disagrees. We are required by rule to consider the quality and value of the water resource proposed for alteration. Some wetland evaluation methods currently exist and we continue working with EPA and academia to refine these methods.

Comment: *In the General Permit for Minor Alterations to Wetlands, the upper limit for allowable impacts to isolated wetlands should be changed from 0.25 acre to 0.5 acre.*

Response: The division disagrees. We believe such an increase in acreage potentially altered would increase the chance of more than *de minimus* impacts to wetlands under this general permit. It is our intent to keep the scope of impacts authorized by general permit to those that do not result in degradation of the affected waters.

**General Permit for Minor Dredging and Filling:**

Comment: *The General Permit for Minor Dredging should increase the total allowable quantity of material excavated to 500 cubic yards.*

Response: The division agrees and has amended the language of the permit.

Comment: *Suggested re-wording for item number seven under the Terms and Conditions in the General Permit for Minor Dredging:*

Current language: Sediment shall be prevented from entering waters of the state. Erosion and sediment controls shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment and shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices.

*Suggested language: Sediment from soil disturbing activities shall be prevented from entering waters of the state. Erosion and sediment controls shall be designed according to the size and slope of disturbed drainage areas to detain runoff and trap sediment and shall be properly selected, installed and maintained in accordance with the manufacturer's specification and good engineering practice.*

Response: The division believes the current language is sufficient.

**General Permit for Sand and Gravel Dredging:**

No comments received

**General Permit for Sediment Removal for Stream Remediation:**

Comment: *In the General Permit for Sediment Removal for Stream Remediation, the EPSC requirement in the Notification section should be more accurately described.*

Response: The division disagrees. Too much specificity would limit the utility of the general permit as the science continues to develop and would not allow for flexibility to consider a variety of unique situations.

Comment: *In the General Permit for Sediment Removal for Stream Remediation, the requirement in the Notification section that specifies the need for photographs of the stream prior to discharge, should not be required, but suggested.*

Response: The division agrees and the language has been amended.

Comment: *The exclusions section of the General Permit for Bank Stabilization, the General Permit for Sediment Removal for Stream Remediation and the General Permit for the Alteration of Wet Weather Conveyances, should include "where a portion of the proposed activity is located in a component of the National Wild and Scenic River System, a State Scenic River, waters designated as Outstanding National Resource Waters;"*

Response: In drafting the general permits, the division carefully considered which waters should be excluded from coverage for each general permit. Since the general permits listed in the comment are considered to be either activities beneficial to the stream or not within the stream (wet weather conveyances), we do not believe it is necessary to exclude those specially designated waters from potential coverage by these general permits. In all cases of proposed stream alteration the division has the authority to require individual permits when we believe it is warranted.

Comment: *The General Permit for Sediment Removal and Stream Remediation should be re-named "General Permit for Removal of Recently-Deposited Sediment in Streams".*

Response: The division understands the basis of the comment, but we do not believe the change is necessary. We believe the purpose of the general permit is accurately reflected.

Comment: *The General Permit for Sediment Removal and Stream Remediation should specify that it is for releases from construction sites (remove "storm water").*

Response: The division agrees and the language has been amended.

Comment: *The General Permit for Sediment Removal and Stream Remediation should be a two stage permit with the first stage being a rapid response, needing minimal notification and the second being a more detailed plan for remediation.*

Response: The division agrees and the language has been amended.

Comment: *In the Notifications sections of the General Permit for Sediment Removal and Stream Remediation, a "proposed method to reincorporate sediment" should not be required.*

Response: The division agrees and the language has been amended.

Comment: *The General Permit for Sediment Removal and Stream Remediation should state that hand tools and equipment such as buckets and shovels shall be used when practicable. (Term & Condition #3)*

Response: The division agrees and the language has been amended.

Comment: *In item number six under Terms and Conditions of the General Permit for Sediment Removal and Stream Remediation, sediment removal should be included and "project" should be changed to "work."*

Response: The division agrees and the language has been amended.

#### **General Permit for Stream Restoration and Habitat Enhancement:**

Comment: *In the General Permit for Stream Restoration, water quality enhancements such as adding oxygen to TVA tailwaters should be included under the scope of the permit.*

Response: Although we have not amended the language of the general permit, we believe that such restoration activities can be authorized within the present scope of the permit.

Comment: *In the General Permit for Stream Restoration, no authorization should be required for water quality enhancements such as adding oxygen to TVA tailwaters.*

Response: This would depend on the nature of the modification intended. Physical modifications of the channel might require authorization under this general permit while modification of turbines or oxygen injection may not.

Comment: *The introduction for the General Permit for Stream Restoration and Habitat Enhancement should specify that the permit is not for wet weather conveyances.*

Response: The division does not believe that this distinction is necessary since the terms "stream" and "wet weather conveyance" have specific meanings within our rules.

#### **General Permit for Surveying and Geotechnical Exploration:**

No comments received.

#### **General Permit for Utility Line Crossings:**

Comment: *Revised notification requirements for the General Permit for Utility Line Crossings should be removed and returned to original version where no additional paperwork is requested for notification and work could commence without written notification from the division.*

Response: The division believes that requiring applicants to submit documentation helps assure that the applicant is aware of the responsibilities involved with the coverage under the GP and allows the division to determine that the project will not cause degradation and will qualify for coverage.

Comment: *The item under Terms and Conditions of the Utility Line Crossing GP regarding multiple stream crossings by gravity sewer lines should be clarified to reflect the exclusion where more than one crossing requires an individual permit.*

Response: The division agrees and the language has been amended.

Comment: *The General Permit for Utility Line Crossings should also include activities involving electrical utility lines, which can contribute to destruction of riparian trees in right-of-way areas.*

Response: If the activities involving electrical utility lines involve alterations of waters of the state, then they would be addressed using an Aquatic Resource Alteration Permit, the same as any other type of utility line. The removal of riparian trees in right-of-way areas is not normally regulated by the division unless excavation or significant soil disturbance is involved.

Comment: *For the General Permit for Construction or Removal of Road Crossings and the General Permit for Utility Line Crossings, flow should not have to be diverted if it involves only the placement of a culvert and clean rock and equipment will remain outside of the flowing water.*

Response: Language has been amended only in the General Permit for Road Crossings.

Comment: *Division should re-insert the following language about permanent alteration or damage to the integrity of the stream channel, from old General Permit for Utility Line Crossings into the new one;- Large trees, steep banks, rock outcroppings, etc. should be avoided.*

Response: The division agrees and the language has been amended.

Comment: *Exclusion #1 should be removed from the General Permit for Utility Line Crossings. "where the proposed project involves more than one crossing of the same stream by gravity sewer lines."*

Response: The division disagrees. Multiple crossings by gravity sewers have been found to result in adverse impacts to in-stream flow – especially in the case of smaller streams.

#### **General Permit for Wetlands Restoration and Enhancement:**

Comment: *The General Permit for Minor Alterations to Wetlands and the General Permit for Wetlands Restoration should include that clearing, grubbing, and other disturbance to the riparian vegetation should also be kept to the minimum necessary for project completion.*

Response: The division agrees and the language has been amended.

#### **Miscellaneous Comments:**

Comment: *The division should include in the general permits, a definitive timetable for processing and providing authorization.*

Response: The division is respectful of the need for timely response. The purpose of the general permits is to provide a streamlined mechanism for activities to obtain coverage. Timely response is dependant upon a complete application.

Comment: *No blasting should be allowed near stream channels.*



Response: The division takes this statement under advisement and is considering further modifications to the general permit for Utility Line Crossings. A change of this magnitude would warrant additional public notice and participation.

Comment: *There should be no stream relocations of any kind under a GP – must have an individual permit at a minimum.*

Response: The division agrees and did not reissue the stream relocation general permit.

Comment: *Remove any for-profit development activities from obtaining coverage under general permits.*

Response: The division believes that there is no basis in law for drawing this distinction.

Comment: *Further restrictions should be made for activities where there is potential loss of flow from blasting etc. Those activities should be required to have an individual permit at a minimum.*

Response: The division takes this statement under advisement and is considering further modifications to the general permit for Utility Line Crossings. A change of this magnitude would warrant additional public notice and participation.

Comment: *None of these general permits may be used with the Corps of Engineers Nationwide Permit that was denied certification as public noticed by TDEC. If the state denied certification, then all related activities should be handled by individual permits from both agencies with full public participation.*

Response: By the state denying a Corp of Engineer Nationwide General Permit, the state is reserving the right to review activities on a case-by-case basis. A nationwide permit remains in effect even when the state denies water quality certification to the nationwide permit. Case-by-case review could result in denial of certification, but may also result in coverage under a state general permit or individual permit. When the division determines that an individual certification is required, there will be a notice public participation process.

Comment: *The department should reduce the review cycles for general permits to two years to allow for changes in scientific research and developments in mining operations etc.*

Response: The division believes that the five year cycle is appropriate for the general permits. The division has the authority to amend or revoke the general permits or coverage under them at any time that it is warranted.

Comment: *Coverage under a general permit should not be given for activities on ecoregion reference streams, 303(d) listed streams and Tier II or III streams.*

Response: The general permits are issued under the premise that the activities covered are *de minimus* in nature and therefore do not warrant the exclusion of reference, impaired or high quality streams. However, the division considers any special status of waters on a case-by-case basis when reviewing proposed activities.

Comment: *All general permits along with individual permits should incorporate a stream buffer requirement similar to that of other TDEC permits.*

Response: Although there are situations where buffer requirements are needed in TDEC permits, the division does not believe that the application of buffer requirements is appropriate in the case of permits that are focused on alterations to waters of the state, top-of-bank to top-of bank.

Comment: *Do restoration projects that involve only planting of vegetation in riparian areas require a permit?*  
Response: No permit is required for planting riparian vegetation.

Comment: *For all the proposed general permits that require notification, the division should accept the Corps of Engineer's application form instead of requiring form CN-1091.*  
Response: The Corps of Engineers application for is an acceptable substitute for state form CN-1091 when the proposed activity will also require authorization by the Corps.

Comment: *In all of the general permits, the item under Terms and Conditions that state that the NPDES GP for Construction Activities needs to be obtained if there is a disturbance of one or more acres, should be clarified by stating "one or more acres of land."*  
Response: The division believes the intent is sufficiently clear as is.

Comment: *The soil stabilization language in the GPs should be consistent with the NPDES General Permit for Construction Activities.*  
Response: The division agrees and the language has been amended.

Comment: *Suggested re-wording of the Terms and Conditions item that refers to using a stream bed as a transportation route:*  
Current language: Stream beds shall not be used as transportation routes for construction equipment. Temporary stream crossings shall be limited to one point in the construction area and erosion control measures shall be utilized where stream banks are disturbed. Stream crossings should be constructed of clean rock and stream flow should be conveyed in appropriately sized pipe. The crossing shall be constructed so that stream flow is not obstructed. Following construction, all rock used for the temporary crossing shall be completely removed and disturbed stream banks shall be restored and stabilized if needed.  
Suggested language: "Streams shall not be used at transportation routes for construction equipment. Temporary stream crossings shall be limited to one point in the construction area and erosion control measures shall be utilized where stream banks are disturbed. Steam crossing should be constructed of clean rock and stream flow should be conveyed in appropriately sized pipe. The crossing shall be constructed so that stream flow is not obstructed. Following construction, all materials used for the temporary crossing must be removed and disturbed stream banks shall be restored and stabilized if needed."  
Response: The division agrees and the language has been amended.

Comment: *Language that was previously found in the general permits should be re-inserted. Suggested language to be re-inserted is: "Excavated materials, removed vegetation, construction debris, and other wastes shall be removed to an upland site and disposed of in such a manner as to prevent reentry of materials into the waterway."*  
Response: The division agrees and the language has been amended.

Comment: *The following explicit language should be included in all general permits, instead of more general language that is found in some; "Applicant is responsible for obtaining the necessary authorization pursuant to applicable provisions of §10 of the Rivers and Harbors Act of 1899; §404 of the Clean Water Act and §26a of the Tennessee Valley Authority Act, as well as any other federal, state or local laws."*  
Response: The division agrees and the language has been amended.

Comment: *It would be helpful to specify that drawings, when required, should be 8 ½ x 11.*

Response: The 8 ½ x 11 are most helpful for applications for individual permits for which the division must prepare a Public Notice. Full-size plans are acceptable for the purpose of GP notification.

Comment: *Will GPs be available as a whole packet, with a cover page listing the GPs?*

Response: Yes. There is such a version posted on the department's web site.

Comment: *In all of the general permits where the Terms and Conditions mention checkdams to be utilized where runoff is concentrated, the phrase "or other erosion control devices" should be inserted.*

Response: The division agrees and the language has been amended.

Comment: *The item under Terms and Conditions in many of the general permits, that states that the NPDES GP for Construction Activities needs to be obtained if there is a disturbance of one or more acres, should be added to the General Permit for Surveying and Geotechnical Exploration.*

Response: The division agrees and the language has been amended.

Comment: *In all of the general permits, re-word "a species formally listed on either state or federal lists of threatened or endangered species or their critical habitat;" to "Federally or State listed species, or such species' habitat;"*

Response: Many areas that do not actually have listed species present could be asserted to be "habitat for" those organisms. The division believes that such language is not sufficiently specific.

Comment: *The General Permit for Relocation of Intermittent Streams, which is expiring, should be reinstated. If TDEC declines, the permits that were issued in the past, should be allowed to remain in effect for the time spans of the original permit coverages.*

Response: The division has decided not to re-issue the General Permit for Relocation of Intermittent Streams because we believe there is a likelihood that this activity could result in more than *de minimus* impacts to streams.

Comment: *The division should consider a General Permit for Road crossings between 200 and 500 feet of stream impacts, with on-site mitigation required.*

Response: The division will take this under consideration but has opted not to change the scope of the general permit at this time.

Comment: *The division should consider a General Permit for Temporary Construction Access and Dewatering.*

Response: If the need for such a general permit can be demonstrated, and if the division can determine that it would be sufficiently protective of water quality, we would consider issuance through a separate process.

Comment: *The application (form CN1091) should not be required for coverage under the general permits. If the form is to be used, then the division should consider excluding some of the requirements such as practicable alternatives, photographs and wetland site maps.*

Response: The division believes that the form CN-1091 is a convenient means of notifying intent to obtain general permit authorizations. Most of the information requested is needed to process either general permit coverage or an individual permit. At the time of notification/application many applicants do not know if their proposed activity will qualify for general permit coverage.

Comment: *The division should be required to provide a written justification whenever it is determined that a project may result in degradation and coverage under a permit is either delayed or denied.*

Response: The division would normally do this.

Comment: *Recommend language in GPs that states "Instream sedimentation control devices are not approved as primary treatment devices. They may be used only as back-up or failsafe protection, upon approval by the division." This is language similar to language that was in the old GPs.*

Response: The division disagrees. In the past we found that this was interpreted as allowing in-stream treatment.

Comment: *The ARAP General Permits contain similar language to the Construction Stormwater General Permit. Those conditions should be deleted from the ARAP GPs and maintain only the language that states that the applicant is responsible for obtaining the CGP.*

Response: The division disagrees. There are situations subject to ARAP coverage where Construction Stormwater permitting is not required.

Comment: *The GPs should include a provision for allowing temporary impoundments.*

Response: While the general permits that require separation of work from flowing waters do not specify temporary impoundments as a means of achieving separation, the division considers that this would be an acceptable practice in limited circumstances. Those situations would be where there is no other practicable means of achieving the separation, where the temporary impoundment would be for very short duration, and would not cause harm to aquatic life or other protected uses downstream.

### **III. Determination**

After consideration of the comments from the public on the draft General Aquatic Resource Alteration Permits, the division has determined that amended general permits can be issued, and if properly utilized will be protective of waters of the State of Tennessee.



Daniel C. Eagar, Manager  
Natural Resources Section  
Division of Water Pollution Control

12 July 2005  
Date